

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

LUTHER SEAY a.k.a LUTHER D. SEAY, JR.,

Plaintiff,

5:24-cv-1468 (BKS/MJK)

v.

KENNETH M. CHRISTOPHER, WILLIAM J.
FITZPATRICK¹, HONORABLE DOHERTY, ANN
USBORNE, MICHAEL KASMAREK and U.S. STOCK
EXCHANGE,

Defendants.

Appearances:

Plaintiff, pro se:

Luther D. Seay Jr.

93001306

Onondaga County Justice Center

555 S. State Street

Syracuse, New York 13202

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Luther D. Seay, Jr. commenced this action pro se in the Northern District of New York asserting claims under 42 U.S.C. § 1983. (Dkt. No. 1). This matter was referred to United States Magistrate Judge Mitchell J. Katz who, on January 6, 2025, issued a Report-Recommendation recommending that Plaintiff's motion to proceed in forma pauperis be granted and that Plaintiff's claims as stated in his Fourth Amended Complaint, against District Attorney William Fitzpatrick, Judge Mary Anne Doherty, and Kenneth M. Christopher be dismissed with

¹ The Clerk of the Court is respectfully directed to substitute defendant William J. Fitzpatrick for the John Doe defendant, and add U.S. Stock Exchange as a new defendant on the docket.

prejudice, and that Plaintiff's claims against Ann Usborne be dismissed without prejudice and with leave to amend. (Dkt. No. 12). After the Report-Recommendation was filed, Plaintiff filed four additional amended complaints and two motions to appoint counsel. (Dkt. Nos. 13–17). On January 29, 2025, this Court issued a Memorandum-Decision and Order adopting Magistrate Judge Katz's Report-Recommendation. (Dkt. No. 18). In the same Order, the Court found that Plaintiff had exhausted his right to amend as a matter of course and had filed the amended pleadings without leave from the Court or written consent from the opposing parties and directed that the four additional amended pleadings be stricken from the docket. (*Id.* at 2 (citing Fed. R. Civ. P. 15(a))). The Court nonetheless granted Plaintiff leave to file an amended complaint. (*Id.* at 3).

On February 7, 2025, Plaintiff filed a Fifth Amended Complaint naming the same Defendants named in the Fourth Amended Complaint as well as Michael Kasmarek, Plaintiff's assigned counsel in a state criminal proceeding, and the U.S. Stock Exchange. (Dkt. No. 19).² On March 24, 2025, Magistrate Judge Katz issued a Report-Recommendation recommending that the Fifth Amended Complaint be dismissed with prejudice for failure to state a claim and further recommended that Plaintiff not be granted leave to amend. (Dkt. No. 20). Magistrate Judge Katz advised Plaintiff that under 28 U.S.C. § 636(b)(1), he had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.* at 12–13)

No objections to the Report-Recommendation have been filed. As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the

² Although this pleading appears on the docket as the "Ninth Amended Complaint," in light of the Court's directive striking the four additional amended pleadings, (Dkt. No. 19, at 2)), the Court, like Magistrate Judge Katz, treats the "Ninth Amended Complaint" as the "Fifth Amended Complaint." (*See* Dkt. No. 20, at 3).

Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 229 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. The Court has reviewed the Report-Recommendation for clear error and found none.

Accordingly, the Court adopts Magistrate Judge Katz's Report-Recommendation in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 20) is **ADOPTED**; and it is further


ORDERED that Plaintiff's Fifth Amended Complaint (Dkt. No. 19 (referred to on the docket as the "Ninth Amended Complaint")) is **DISMISSED with prejudice** for failure to state a claim upon which relief may be granted and **without leave to amend**; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment and close this case; and it is further

ORDERED that the Clerk serve a copy of this Order on the Plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: May 2, 2025
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge